[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-1999-4971, Amendment No. 93-78]

RIN 2120-AG50

High Density Airports; Allocation of Slots

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the regulations governing takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports. As a result of the "Open Transborder" Agreement between the Government of the United States and Government of Canada, this rule codifies the provisions of the bilateral agreement and ensures consistency between FAA regulations governing slots and the bilateral agreement.

DATES: Effective on October 31, 1999.

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SUPPLEMENTARY INFORMATION:

Availability of Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339), the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512-1661), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322-2722 or (202) 267-5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9677. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on a mailing list for future FAA rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Small Business Regulatory Enforcement Fairness Act

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Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: JFK International Airport, LaGuardia Airport, O'Hare International Airport, Ronald Reagan National Airport, and Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, by hour or half hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a "slot" for each IFR landing or takeoff during a specific 30- or 60- minute period. The restrictions were lifted at Newark in the early 1970's.

On December 16, 1985, the Department of Transportation (Department) promulgated the "buy/sell" rule, a comprehensive set of regulations that provide for the

allocation and transfer of air carrier and commuter slots (50 FR 52180; December 20, 1985). The two primary features of this rule were, first, that initial allocation would be accomplished by "grandfathering" existing slots to the carriers that currently held them, and second, that a relatively unrestricted aftermarket in slots would be permitted. As a result, effective April 1, 1986, slots used for domestic operations could be bought and sold by any party.

The FAA allocates slots designated for international use by U.S. and foreign-flag carriers under procedures different from those that apply to the allocation of slots designated as domestic. Under 14 CFR section 93.217, international slots are allocated at Kennedy and O'Hare twice a year for the summer and winter scheduling seasons.

In promulgating the "buy/sell" rule, the Department determined that, as a matter of international aviation policy, the allocation of new slots to international carriers at Kennedy and O'Hare Airports would be made by the FAA based on requests from foreign and U.S. operators conducting international operations (50 FR 52187; December 20, 1985).

O'Hare is unique in that domestic slots are withdrawn to accommodate requests for international operations during each summer and winter season. 14 CFR section 93.217(a)(6) specifically provides that the FAA must allocate a slot for an international operation at O'Hare upon request. If there is not an available slot within 60 minutes of the requested time, a slot would be withdrawn from a domestic carrier to fill that request. At LaGuardia, section 93.217(a)(7) provides that additional slots will be allocated for international operation if required by bilateral agreement. At Kennedy, section

93.217(a)(8) provides that domestic slots will be withdrawn for international operations only if required by international obligations.

At the time of the "buy/sell" rule, the Department concluded that since certain slots used for international operations are specially treated within Subpart S, it is important that the Department be aware of which slots are being used for those operations. Therefore, U.S. carriers were required to submit to the FAA in writing, the slots that were used for international operations as of December 16, 1985. These slots were then designated by the FAA as international slots.

International slots may not be bought, sold, leased, or otherwise transferred, except such slots may be traded to another slot holder on a one-for-one basis at the same airport. Furthermore, if a carrier does not use an international slot for more than a two-week period, the slot must be returned to the FAA. International slots may only be used for international service.

However, FAA regulations permit the use of domestic slots for either international or domestic service. Regardless of the type of service, i.e., domestic or international, the minimum slot usage requirement and withdrawal procedures apply to a slot designated as domestic. FAA regulations governing slots provide for lotteries of domestic slots in certain circumstances. These regulations also permit only U.S. carriers to participate in lotteries for domestic slots. International slots are not allocated by the lottery mechanism.

U.S.- Canada Bilateral Agreement

On February 24, 1995, the Government of the United States and the Government of Canada entered into a bilateral agreement (Agreement) phasing in an "Open

Transborder" regime between the two countries. Annex II of the Agreement specifically addresses slots and access to O'Hare, LaGuardia and Ronald Reagan National Airports. The Agreement provides that: (1) the Canadian carriers will be able to obtain slots at the High Density Traffic Airports under the same prevailing allocation system as U.S. carriers; (2) the base level of slots established for Canada will consist of 42 slots at LaGuardia, and 36 slots for the Summer season at O'Hare and 32 slots for the Winter season at O'Hare; (3) Canadian carriers' slot base at LaGuardia and O'Hare (which currently is comprised of international slots), effectively will "convert" to domestic slots; (4) all slots acquired by the Canadian carriers, including the determined slot base, as described in (2) above, at LaGuardia and O'Hare, will be subject to the minimum slot usage requirement set forth in section 93.227 and may be withdrawn for failure to meet that requirement; (5) the provisions of the bilateral agreement do not permit the determined slot base at LaGuardia and O'Hare to be withdrawn for the purpose of providing a U.S. or foreign air carrier with slots for international operations or to provide slots for new entrant operators; (6) any slots acquired after the transition date that do not form part of the determined slot base may be withdrawn at any time to fulfill operational needs; (7) neither the Government of Canada nor any Canadian carrier may modify the determined slot base at LaGuardia or O'Hare and then have claim to any other time slot to restore the base; and (8) slots that are acquired above the determined slot base level and then subsequently disposed of shall not modify the base.

Discussion of Comments

The comment period closed on February 11, 1999, with 8 comments filed. Two additional reply comments were subsequently received and considered. Seven comments

were submitted by airlines and one comment was submitted by an association. American Airlines and Northwest Airlines generally supported the proposal, with Air Canada and United Airlines supporting the proposal with certain modifications and clarifications. Filing in opposition, the Air Carrier Association of America commented that the rulemaking should be suspended until such time as the Department makes additional slots available to new entrant carriers. Canadian Airlines commented that the proposed rules are insufficient to accomplish the goals of the Agreement and, if adopted, should be accompanied by proposals to increase access at the high density airports. Certain comments, discussed more fully below, raised issues that are beyond the scope of this rulemaking and beyond the scope of the "Open Transborder" Agreement between the Government of the United States and the Government of Canada. Additionally, changes to or interpretation of existing statutory language concerning slot exemption authority given to the Secretary of Transportation under 49 U.S.C. 41714 are also beyond the scope of this rulemaking.

The comments are divided into the following categories: (1) conversion of certain international slots to domestic slots; (2) establishment of regulatory base of slots for the Canadian carriers; (3) international slot allocation; (4) domestic slot allocation; and (5) slot withdrawal provisions.

Conversion of International Slots to Domestic Slots

Notice No. 99-1 proposed reclassifying to domestic slots 35 international slots at Chicago O'Hare and 17 international slots at LaGuardia Airport held by U.S. carriers. In addition, the Canadian slot base of 36 slots in the summer season, 32 slots in the winter season at Chicago O'Hare, and 42 slots at LaGuardia Airport would also be

classified as domestic. As discussed in the proposal, the reclassification only applies to the international slots that were held by U.S. carriers on December 16, 1985, provided that an equivalent number of international slots were held as of February 24, 1998, (the phase-in of the Agreement). The slots comprising the Canadian carrier base effectively were granted domestic slot attributes by the terms of the Agreement. These attributes include the ability of Canadian carriers to "monetize" slot holdings, which permits the transfer of slots for any consideration. Since FAA regulations do not permit the sale of international slots, this reclassification of international slots to domestic slots is in accordance with the terms of the Agreement.

The proposal was generally supported by Air Canada, American Airlines, Northwest Airlines, and United Airlines. The Air Carrier Association of America commented that the proposal would enable large carriers to increase their slot holdings while new entrant airlines are "frozen out of the airports." Canadian Airlines commented that reclassifying certain international slots [of U.S. carriers] would disadvantage Canadian carriers because Canadian carrier slots could be used only for transborder service between the U.S. and Canada. Canadian Airlines argued that since U.S. carriers could use the slots for transborder service, for domestic U.S. service, or for other international service, the net effect would make the slots more valuable to U.S. carriers, and therefore, more expensive for Canadian carriers to acquire.

FAA Response: After reviewing the comments, the FAA is adopting the rule as proposed. FAA recognizes that designating the slots as domestic is expected to provide additional economic benefits and increased flexibility for use of the slots. These economic benefits were contemplated for Canadian carriers as part of the negotiated

Agreement, and the rule, as adopted, provides similar treatment for U.S. carriers with long-term use of these international slots. Approximately 90% of the reclassified slots were used in transborder U.S./Canada service and were operated by the carriers for many years both before and after the Department's slot allocation rules were issued on December 16, 1985. Reclassifying these international slots as domestic does not increase the number of slots that may be operated by the carriers. Furthermore, maintaining an international designation on these slots used by U.S. carriers would not result in additional slot availability for new entrant airlines. If certain international slots held by U.S. carriers were not reclassified as domestic, the FAA would be required to allocate international slots for transborder services to U.S. carriers while treating identical services by Canadian carriers as domestic under the terms of the Agreement. FAA believes the reclassification of slots for U.S. carriers is not only equitable but, combined with adopted changes in allocation procedures for transborder operations herein, provides equivalent treatment for U.S. and Canadian carriers.

Contrary to comments by the Air Carrier Association of America, the FAA does not find that adoption of the proposal would preclude, or affect in any way, the Department's use of the exemption authority codified at 49 U.S.C. 41714 to increase access to the high density airports.

This final rule also adopts the proposal to reduce the international base allocation for carriers subject to the provisions of 14 CFR section 93.217(a)(10). Canadian Airlines commented that the reclassification would provide the largest U.S. carriers with an opportunity to increase their international allocation since the reclassification of slots would bring them below their international slot allocation limit.

The allocation of international slots to carriers with 100 or more permanent slots at Chicago O'Hare is limited, by regulation, to international slots held as of February 23, 1990. Carriers with 100 or more permanent slots at Chicago O'Hare may add additional international flights as long as they may be accommodated without withdrawal of domestic slots. This rule as adopted provides for a permanent reduction to the February 23, 1990, international slot base for affected carriers that corresponds to the number of slots reclassified as domestic under the adopted provisions of new section 93.218. American Airlines and United Airlines are the only carriers subject to this provision and both currently operate international flights in excess of the number of international slots allocated to them by using slots from their domestic slot base. As stated in the proposal, after the permanent reduction for the number of slots reclassified under section 93.218, American Airlines' international slot base under section 93.217(a)(10) is reduced from 35 to 17 international slots and United Airlines' international slot base is reduced from 17 to 2. Therefore, contrary to Canadian's comment, American and United's international slot allocation will continue to be capped, but at a lower number, which compensates for the conversion of international slots to domestic.

Establishment of Regulatory Base of Slots for Canadian Carriers

The Agreement provides for a base level of slots for Canadian carriers at Chicago O'Hare and LaGuardia Airport that includes an increase over the number of slots operated by Canadian carriers at the time the Agreement was signed. Since summer 1995, the Canadian carriers have operated 10 additional slots at Chicago O'Hare and 14 slots at LaGuardia Airport per the Agreement. The Canadian carriers' base at Chicago O'Hare includes the growth of operations by Canadian carriers since the international slot

allocation rules were adopted in December 1985. At O'Hare, this growth has resulted in 14 slots in the summer season and 10 slots in the winter. These slots are not allocated permanently to the Canadian carriers but are international slots that are allocated seasonally in time periods for which domestic slots generally have been withdrawn from U.S. carriers. Under the terms of the Agreement, these international slots are included as part of the base level of slots for Canadian carriers. FAA regulations governing slot allocation do not provide for the permanent withdrawal of domestic slots at Chicago O'Hare for the Canadian slot base. Air Canada commented that the slots constituting the base level should be within the slot-controlled hours at the high density traffic airports. Both Air Canada and Canadian Airlines commented that their slot base was significantly less than the major U.S. carriers at the high density airports, which makes it more difficult for them to make competitive schedule changes within their own slot base. Furthermore, Air Canada cited difficulties with trading of slots. Thus, Air Canada commented that slots constituting the base should be "grandfathered at the times required for competitively viable operations."

FAA Response: The FAA is adopting, as proposed, an amendment to increase the quota under 14 CFR section 93.123 by adding a footnote that specifically allocates to the Canadian carriers 24 slots at Chicago O'Hare International Airport and 14 slots at LaGuardia Airport.

The FAA will consider historical records of slot holdings to the extent practical and recognizes that Canadian carriers previously have been allocated international slots under the provisions of 14 CFR section 93.217. The allocation of international slots under this section has provided the Canadian carriers the opportunity to request and

receive slot timing adjustments for several scheduling seasons since the Agreement was signed in 1995. It is unclear from the comments, therefore, what Air Canada would identify as its requested "grandfathered" slot times.

The FAA will consult with the affected individual affected carriers to determine the exact timing of the slots comprising the Canadian slot base. All the slots included in the Canadian slot base will be within the slot controlled hours. FAA records indicate that the summer base of 36 slots at Chicago O'Hare has already been allocated for summer 1999 within the slot controlled hours of 6:45 a.m. through 9:14 p.m. FAA records also indicate that the Canadian carriers are allocated the base level of 42 slots at LaGuardia Airport during the peak slot-controlled hours of 7:00 a.m. through 9:59 p.m. The FAA will use historic records, to the extent practical, when determining the times of the slots comprising the base established under the new section 93.218. The Chief Counsel of the FAA will be the final decisionmaker for these determinations. Canadian carriers may subsequently transfer and trade slots under the current slot regulations that apply to U.S. carriers and domestic slots.

International Slot Allocation

The Notice proposed amending 14 CFR section 93.217 to exclude transborder service solely between a high density traffic airport and Canada. Canadian Airlines commented that non-Canadian foreign carriers will gain an unfair advantage since they would continue to have access to international slots for transborder service while U.S. and Canadian carriers would not be eligible to receive international slots.

FAA Response: The FAA is adopting the rule as proposed. The Agreement clearly states that Canadian carriers are to be subject to the same slot allocation system as

U.S. airlines for domestic services. In order to ensure that Canadian and U.S. carriers are allocated slots for transborder services in the same fashion, this rule treats transborder flights between high density traffic airports and Canada as domestic flights for slot allocation purposes. Flights by non-Canadian foreign carriers were not addressed in the slot provisions of the U.S./Canada bilateral aviation agreement and are not affected by this change.

As proposed, the final rule amends the submission deadline for slots allocated under 14 CFR section 93.217 by establishing a seasonal deadline through notice in the Federal Register. The current submission deadline is articulated in the regulations as May 15 for the following winter scheduling season and October 15 for the following summer season. The deadline typically is within a few days of the submission deadline established for the International Air Transport Association Schedule Coordination Conferences. Coordination of the FAA submission deadline with the standard international deadline will reduce administrative workload for the airlines requesting slots since they will no longer need to track two separate submission deadlines. No comments were filed opposing this provision.

Domestic Slot Allocation

The Notice also proposed to include eligible foreign air carriers in slot lotteries under 14 CFR section 93.225(e), where provided for by bilateral agreement. Canadian Airlines commented that the proposed amendment does not guarantee access to lotteries since the U.S./Canada Bilateral Agreement does not specifically address lotteries. Both Air Canada and Canadian Airlines commented on statutory and other legislative proposals related to access by air carriers to the high density traffic airports that may limit

eligibility for non-U.S. carriers. The Air Carrier Association of America indicated the rulemaking should be suspended since the Department has not increased permanent slots for new entrant airlines.

FAA Response: The FAA does not agree with these comments. The Agreement explicitly states that any slot needs of Canadian carriers above the base levels shall be acquired through the prevailing system for slot allocation applicable to U.S. domestic operations. As stated in the Notice, slot lotteries are one of the regulatory methods by which available domestic slots are allocated to U.S. carriers. Consequently, it is necessary to amend the regulations so that Canadian carriers are eligible to participate in any slot lotteries. Thus, in accordance with the terms of the Agreement, the rule as adopted permits eligible Canadian carriers to participate in slot lotteries. Canadian carriers will also be subject to the same provisions governing lottery slots as U.S. carriers, such as use-or-lose and limitations on transfers, as are U.S. carriers.

In addition, the FAA reiterates that the primary purpose of this rulemaking is to amend the FAA slot regulations so that they are not in conflict with the Agreement. Other issues related to slot allocation procedures or slot exemption policies are beyond the scope of this rulemaking.

Slot Withdrawal Provisions

The FAA is adopting the proposal to amend section 93.223 by adding a new paragraph that would prevent the withdrawal of slots comprising the established Canadian slot base, as specified in the Agreement and defined in the new section 93.218, to fulfill requests for international operations or for new entrants.

United Airlines requested that the FAA amend the proposed rules to extend the slot withdrawal protection, provided to the Canadian carriers under the Agreement, to the domestic slots of U.S. carriers now reclassified under the new section 93.218(a). United Airlines also proposed that FAA confirm, by rule, that for the purposes of determining the total number of domestic slots withdrawn for international slot allocation under section 93.217, the FAA exclude slots that were withdrawn as of October 31, 1993, specifically used for transborder services. In addition, United Airlines contends that the FAA is limited to withdrawing domestic slots for international service only to the extent that the requesting carrier provided international service as of October 31, 1993.

FAA Response: The FAA is not adopting United's request to exclude the reclassified slots from the pool of domestic slots that are eligible for withdrawal under the regulations. Adopting this requested modification would provide greater protection to these "reclassified" slots held by U.S. carriers that is beyond the limits that apply to all other designated domestic slots. In addition, this modification would have given the slots greater protection than than they would have had in 1985 had these slots been used for domestic service and not used for international service and thus designated as international slots. The Agreement is silent on treatment of U.S. carriers while it is specific on the limitations on slot withdrawal for the Canadian slot base. The FAA is reclassifying certain international slots of U.S. carriers as domestic primarily to treat U.S. and Canadian carriers in a similar fashion for slot allocation purposes. The FAA does not believe that identical treatment is required in all cases.

The rule as adopted increases the quota under section 93.123 to accommodate a growth of 14 operations by Canadian carriers since 1985 at Chicago O'Hare, which were

largely accommodated by the withdrawal of domestic slots. United Airlines commented that the FAA no longer needs to withdraw domestic slots to fund Canadian carrier operations and furthermore, that any carrier wishing to increase international operations at the airport should apply to the Secretary of Transportation for an exemption to provide the service. United argued that the FAA should, as a matter of policy, administratively reduce the legislative cap on the number of slots that it withdraws for international allocation.

The FAA does not agree with and finds no basis for United Airlines' interpretation of 49 U.S.C. 41714(b). This provision specifically prohibits the withdrawal of slots to exceed the total number of slots withdrawn from an air carrier as of October 31, 1993. The FAA is limited, by statute, to allocating an international slot only if the allocation can be accommodated by available slots combined with the number of slots available through the withdrawal of domestic slots. Neither the statutory language nor the legislative history indicate any Congressional intent to further limit the withdrawal process to apply to carriers conducting service as of October 31, 1993.

Lastly, the FAA and the Department decline to issue any policy determination on further limiting the number of domestic slots withdrawn beyond the legislative cap set forth in 49 U.S.C. § 41714(b) as this issue is outside the scope of this rulemaking. Any action of this nature would be addressed in a separate forum.

The FAA has inserted language in the regulatory text of § 93.225, Lottery of available slots, to further clarify that the lottery procedures apply not only to U.S. carriers but also to foreign air carriers where provided for by bilateral agreement.

Effective Date

This rule is effective October 31, 1999, which coincides with the beginning of the Winter 1999 scheduling season. International slots for the upcoming winter season at O'Hare were allocated and confirmed during the June 1999 IATA meeting held in Miami, Florida. This rule does not affect any carrier's allocation of international slots at O'Hare, nor the slots withdrawn for the Winter 1999 scheduling season.

The Rule

As a result of the U.S.-Canada bilateral agreement, which phased in an "Open Transborder" regime between the two countries, the FAA amends Subparts K and S to: (1) codify, in a footnote to the hourly slot totals in subpart K, the 14 slots at LaGuardia and 24 slots at O'Hare that were allocated to the Canadian carriers in June 1995; (2) exclude from the allocation of international slots at HDR airports transborder service operations solely between that airport and Canada; (3) set forth the provisions that apply to slots used for transborder service between the U.S. and Canada and codify the established base level of slots allocated to Canadian carriers; (4) reclassify certain international slots as domestic slots; (5) reduce the international allocation for air carriers that hold and operate more than 100 permanent slots at O'Hare by the number of international slots reclassified as domestic slots; (6) permit Canadian carriers to participate in any lotteries of domestic slots; and (7) amend the regulatory deadline for submitting requests for international allocation to coincide with the published IATA deadline.

Environmental Review

The primary purpose of the regulation is to amend the slot rule to conform to the U.S.-Canadian Bilateral Agreement. FAA has concluded that the provisions of the

regulation that implement the Agreement do not involve proposed federal agency action within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, or other environmental laws. As explained below, that Agreement specifically mandates the reclassification of Canadian international slots as domestic slots and the allocation of base level slots for Canadian carriers at LaGuardia and O'Hare. These base level allocations reflect current slot holdings by Canadian carriers except at O'Hare, where additional allocation was required. The FAA had no discretion in this regard. In allocating the additional slots required at O'Hare, the FAA could not maintain the same total number of slots. There is a legislative cap on the number of domestic slots withdrawn for international operations and the FAA lacks a regulatory mechanism to permanently withdraw slots from one carrier to redirect them to another for purposes of maintaining international obligations.

To assure fairness to the U.S. domestic carriers, the regulation will also reclassify certain international slots held by U.S. carriers as domestic slots. To reflect the reclassification, it will also reduce the international base allocation for carriers subject to 14 C.F.R. 93.217(a)(10). FAA's exercise of discretion to exceed the requirements of the Agreement in this manner would not increase the overall number of slots or operations. This portion of the rule accordingly qualifies for categorical exclusion under the National Environmental Policy Act as administrative and operating actions pursuant to FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, paragraph 31(a)(1). As these provisions are procedural in nature and lack the potential to impact the environment, similarly no further analysis is required under other environmental laws or regulations.

Reclassification and Allocation of Slots for Canadian Carriers

In accordance with the Agreement, part one of this regulation reclassifies slots held by Canadian carriers at LaGuardia and O'Hare airports. The Canadian carriers' slots will be converted from international to a modified form of domestic slots. Under the arrangement mandated by the Agreement and codified in this regulation, the slots held by the Canadian carriers would resemble domestic slots in that (1) they can be bought, sold, or traded on the open market, and (2) they are subject to the bi-monthly use or lose requirement. Unlike other domestic slots, however, the slots held by Canadian carriers are not subject to seasonal withdrawal for international use pursuant to 14 C.F.R. section 93.217 or for new entrants.

Part two of this regulation establishes base levels of permanent slots for the Canadian carriers at LaGuardia and O'Hare. The Agreement directs that the Canadian carriers receive 42 permanent slots at LaGuardia. Currently, the Canadian carriers are using 42 slots at LaGuardia so no additional allocation of slots is necessary. This Agreement also directs that the Canadian carriers receive 36 Summer slots and 32 Winter slots at O'Hare. Currently, the Canadian carriers hold 22 permanent slots at O'Hare. The Canadian carriers also are currently allocated 14 seasonal slots for the summer and 10 seasonal slots for the winter under 14 C.F.R. 93.217 in the time periods for which domestic slots are withdrawn. To complete the base level of slots at O'Hare, the regulation provides that an additional 14 new slots in the summer and 10 new slots in the winter be allocated permanently to the Canadian carriers. Because the Canadian carriers are receiving these allocations as permanent per the Agreement, the regulation also

provides that they are no longer eligible to receive international slots under 14 C.F.R. 93.217.

No NEPA or other environmental analysis is required because these portions of the regulation are ministerial in nature. The FAA has no choice about how to accomplish the international mandate, which reclassifies international slots held by Canadian carriers as domestic slots and provides additional slots at O'Hare. While the FAA retains complete authority to withdraw slots for operational needs in accordance with 14 C.F.R. 93.223, the existing allocating mechanisms do not provide a means for the FAA to allocate the slots to the Canadian carriers. Title 14 C.F.R. section 93.225 provides that if slots are available, the slots will be distributed by random lottery with new entrant and limited incumbent carriers receiving priority. In addition, fulfilling the Agreement obligation by allocating slots under 14 C.F.R. section 93.217 is not feasible since these slots are allocated seasonally. Furthermore, even if allocating slots under 14 C.F.R. 93.217 were feasible, slot withdrawals by the FAA are legislatively capped at the level of slots withdrawn as of October 31, 1993. 49 U.S.C. 41714(b)(2). As a practical matter, given the legislative cap, scheduling requirements, and regulations regarding priorities for reallocating slots, the withdrawal of slots will not provide for the 14 additional slots needed at O'Hare pursuant to the Bilateral Agreement. Thus, lacking a mechanism for withdrawing the slots from the existing slot holders and re-directing them to the Canadian carriers, the FAA has no choice but to comply with the Bilateral Agreement by creating 14 additional slots at O'Hare. NEPA requires agencies to take environmental concerns into consideration when making decisions where a range of alternatives is available.

However, under these circumstances, where no choice is involved, an action is ministerial and no NEPA analysis is required.

The FAA's position that this portion of the regulation is ministerial finds support in the NEPA-implementing regulations promulgating by the Department of State, 22 C.F.R. part 161. Among the actions which the State Department exempts from NEPA analysis are:

Mandatory actions required under any treaty or international agreement to which the United States Government is a party, or required by the decisions of international organizations or authorities in which the United States is a member or participant, except when the United States has substantial discretion over implementation of such requirements.

By comparison, the allocation of slots to the Canadian carriers is an example of an action that would likely be exempt under the State Department regulations. The FAA is required by the Agreement to allot permanent slots to the Canadian carriers, and the agency has no discretion but to create additional slots. Given the international agreement, the FAA adopts the position espoused by the State Department and concludes that the allocation of slots and establishment of a base level for the Canadian carriers, as required by the Agreement, does not involve proposed federal action within the meaning of NEPA and other environmental laws.

Reclassification of Slots Held by U.S. Carriers and Reduction of International Base Allocation Of Carriers Subject to Regulatory Cap

To prevent disparate treatment between U.S. carriers and Canadian carriers, part one of the regulations also reclassifies certain identified international slots held by U.S.

carriers as domestic slots. The FAA is also adopting the proposal to reduce the international slot base allocation for carriers subject to 14 C.F.R. 93.217(a)(10). While FAA is exercising discretionary authority in these areas, none of these aspects of the regulation have the potential to increase total slots or operations. Accordingly, they qualify for categorical exclusion under the National Environmental Policy Act as administrative and operating actions pursuant to FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, paragraph 31(a)(1). No extraordinary circumstances exist that would warrant preparation of an environmental assessment, such as likelihood of controversy on environmental grounds. Similarly, as there are no potential environmental impacts, analysis is not required under other environmental laws and regulations.

Compatibility with ICAO Standards

In keeping with U.S. obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs

agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is "a significant regulatory action" under section 3(f) of Executive Order 12866 and is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade.

Although the total number of slots (international plus domestic) will not increase for any of the U.S. carriers, the number of domestic slots for affected carriers will increase. The rule will generate benefits for those air carriers holding slots historically identified for international use under 14 CFR 93.215 (d) because those international slots will be converted to domestic slots. Operators benefit because of the enhanced flexibility they receive to manage their scheduling at High Density Requirement airports. The slots that have been converted from international slots to domestic slots can be scheduled in Canada - U.S. transborder service, they can be scheduled in other domestic service, or they can be scheduled for international service. Operators also receive an expanded economic value because the market has placed a value on domestic slots if the operator decides to buy, sell, lease, barter, or collateralize slots. Therefore, the FAA believes that the rule will benefit operators not only because domestic slots present a greater measure of potential earning power than do international slots, but also because domestic slots offer operators a better opportunity to manage their assets in such a way as not to lose them due to the minimum usage requirements; international slots do not provide this benefit.

This rule only affects Canadian carriers conducting transborder service into and out of the HDR airports and U.S. carriers using certain designated international slots in 1985 and the equivalent number held as of February 24, 1998. The rule will not impose any additional equipment, training, administrative, or other cost to the carriers involved. Therefore, there is no compliance cost associated with the rule.

Qualitative benefits from the rule will come from converting certain identified international slots to domestic slots, thereby affording operators greater flexibility because the converted slots can be used for transborder service, any other domestic service, or for international service. Also, domestic slots have greater economic value than international slots because domestic slots can be bought, sold, leased, bartered, or used as collateral. Due to the advantages domestic slots offer over international slots, operators have an enhanced opportunity to manage their assets in such a way as to maximize their income. Therefore, the FAA has determined that the rule is cost beneficial.

Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule will impact entities regulated by part 93. The FAA has determined that the amendments to part 93, Subparts K and S will affect only two Canadian carriers and four major U.S. carriers and the amendments will not have a significant impact on these major air carriers' costs. Therefore, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This rulemaking could positively effect the sale of Canadian aviation services in the United States, but it could also positively affect the sale of United States aviation services in Canada. However, this rule is not expected to impose a competitive advantage or disadvantage to either US air carriers doing business Canada or Canadian air carriers doing business in the United States. This assessment is based on the fact that this rule will not impose additional costs on either US or Canadian air carriers.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

Information collection requirements in this amendment previously have been approved by the Office of Management and Budget (OMB) under the provisions of the

Paperwork Reduction Act of 1995 (49 USC 3507(d)), and have been assigned OMB control number 2120-0639.

This collection covers Canadian carriers or commuter operators needing to report to the FAA certain aspects of their operations at HDR airports. Specifically, FAA regulation requires notification of (1) requests for confirmation of transferred slots; (2) requests to be included in a lottery for available slots; (3) usage for slots on a bi-monthly basis; and (4) requests for short-term use of off peak hour slots. The total reporting burden associated with this rule is 66 hours. The requirement would be mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a current valid OMB control number. The OMB control number associated with the collection of this information is 2120-0639.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Energy Impact

The energy impact of this final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94-163, as amended (42 U.S.C. 6362). It has been determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), Reporting and recordkeeping.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 93 of Title 14, Code of Federal Regulations as follows:

PART 93 -- SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

2. Section 93.123 is amended in the first chart in paragraph (a)by adding a new footnote 5 in the headings in column 2 and 4 of the chart and by revising the heading in the fifth column to read as follows:

§ 93.123 High density traffic airports.

(a) * * *

IFR OPERATIONS PER HOUR

AIRPORT

Class of user	LaGuardia [4 5]	Newark	O'Hare [2 3 5]	Ronald Reagan National [1]

* * * * *

[1] Washington National Airport operations are subject to modifications per section 93.124.

[2] The hour period in effect at O'Hare begins at 6:45 a.m. and continues in 30-minute increments until 9:15 p.m.

[3] Operations at O'Hare International Airport shall not-

(a) Except as provided in paragraph (c) of the note, exceed 62 for air carriers and 13 for commuters and 5 for “other” during any 30-minute period beginning at 6:45 a.m. and continuing every 30 minutes thereafter.

(b) Except as provided in paragraph (c) of the note, exceed more than 120 for air carriers, 25 for commuters, and 10 for “other” in any two consecutive 30-minute periods.

(c) For the hours beginning as 6:45 a.m., 7:45 a.m., 11:45 a.m., 7:45 p.m. and 8:45 p.m., the hourly limitations shall be 105 for air carriers, 40 for commuters and 10 for “other,” and the 30-minute limitations shall be 55 for air carriers, 20 for commuters and 5 for “other.” For the hour beginning at 3:45 p.m., the hourly limitations shall be 115 for air carriers, 30 for commuters and 10 for “others”, and the 30-minute limitations shall be 60 for air carriers, 15 for commuters and 5 for “other.”

[4] Operations at LaGuardia Airport shall not-

(a) Exceed 26 for air carriers, 7 for commuters and 3 for “other” during any 30-minute period.

(b) Exceed 48 for air carriers, 14 for commuters, and 6 for “other” in any two consecutive 30-minute period.

[5] Pursuant to bilateral agreement, 14 slots at LaGuardia and 24 slots at O’Hare are allocated to the Canadian carriers. These slots are excluded from the hourly quotas set forth in section 93.123 above.

* * * * *

3. Section 93.217 is amended by revising paragraphs (a) introductory text, (a)(5), (a)(6), (a)(8) and (a)(10)(i) to read as follows:

§93.217 Allocation of slots for international operations and applicable limitations.

(a) Any air carrier or commuter operator having the authority to conduct international operations shall be provided slots for those operations, excluding transborder service solely between HDR airports and Canada, subject to the following conditions and the other provisions of this section:

* * *

(5) Except as provided in paragraph (a)(10) of this section, at Kennedy and O'Hare Airports, a slot shall be allocated, upon request, for seasonal international operations, including charter operations, if the Chief Counsel of the FAA determines that the slot had been permanently allocated to and used by the requesting carrier in the same hour and for the same time period during the corresponding season of the preceding year. Requests for such slots must be submitted to the office specified in § 93.221(a)(1), by the deadline published in the Federal Register notice each season. For operations during the 1986 summer season, requests under this paragraph must have been submitted to the FAA on or before February 1, 1986. Each carrier requesting a slot under this paragraph must submit its entire international schedule at the relevant airport for the particular season, noting which requests are in addition to or changes from the previous year.

(6) Except as provided in paragraph (a)(10) of this section, additional slots shall be allocated at O'Hare Airport for international scheduled air carrier and commuter operations (beyond those slots allocated under § 93.215 and § 93.217(a)(5) if a request is submitted to the office specified in § 93.221(a)(1) and filed by the deadline published in the Federal Register notice each season. These slots will be allocated at the time

requested unless a slot is available within one hour of the requested time, in which case the unallocated slots will be used to satisfy the request.

* * *

(8) To the extent vacant slots are available, additional slots during the high density hours shall be allocated at Kennedy Airport for new international scheduled air carrier and commuter operations (beyond those operations for which slots have been allocated under §§ 93.215 and 93.217(a)(5)), if a request is submitted to the office specified in § 93.221(a)(1) by the deadline published in the Federal Register notice each season. In addition, slots may be withdrawn from domestic operations for operations at Kennedy Airport under this paragraph if required by international obligations.

* * *

(10) * * *

(i) Allocation of the slot does not result in a total allocation to that carrier under this section that exceeds the number of slots allocated to and scheduled by that carrier under this section on February 23, 1990, and as reduced by the number of slots reclassified under §93.218, and does not exceed by more than 2 the number of slots allocated to and scheduled by that carrier during any half hour of that day, or

* * * * *

3. A new § 93.218 is added to read as follows:

§ 93.218 Slots for transborder service to and from Canada.

(a) Except as otherwise provided in this subpart, international slots identified by U.S. carriers for international operations in December 1985 and the equivalent number of

international slots held as of February 24, 1998, will be domestic slots. The Chief Counsel of the FAA shall be the final decisionmaker for these determinations.

(b) Canadian carriers shall have a guaranteed base level of slots of 42 slots at LaGuardia, 36 slots at O'Hare for the Summer season, and 32 slots at O'Hare in the Winter season.

(c) Any modification to the slot base by the Government of Canada or the Canadian carriers that results in a decrease of the guaranteed base in paragraph (b) of this section shall permanently modify the base number of slots.

4. § 93.223 is amended by adding a new paragraph (c)(4) to read as follows:

§ 93.223 Slot withdrawal.

* * *

(c) * * *

(4) No slot comprising the guaranteed base of slots, as defined in section 93.318(b), shall be withdrawn for use for international operations or for new entrants.

* * * * *

5. § 93.225 is amended by revising paragraph (e) to read as follows:

§ 93.225 Lottery of available slots.

* * *

(e) Participation in a lottery is open to each U.S. air carrier or commuter operator operating at the airport and providing scheduled passenger service at the airport, as well as where provided for by bilateral agreement. Any U.S. carrier, or foreign air carrier where provided for by bilateral agreement, that is not operating scheduled service at the airport and has not failed to operate slots obtained in the previous lottery, or slots traded

for those obtained by lottery, but wishes to initiate scheduled passenger service at the airport, shall be included in the lottery if that operator notifies, in writing, the Slot Administration Office, AGC-230, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The notification must be received 15 days prior to the lottery date and state whether there is any common ownership or control of, by, or with any other air carrier or commuter operator as defined in §93.213(c). New entrant and limited incumbent carriers will be permitted to complete their selections before participation by other incumbent carriers is initiated.

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Issued in Washington, DC, on September 27, 1999
/s/Jane F. Garvey
Administrator